

ESTTA Tracking number: **ESTTA551046**

Filing date: **07/29/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207031
Party	Plaintiff Vyapar Capital Market Partners, LLC
Correspondence Address	Eric Vaughn-Flam Sanders Ortoli Vaughn-Flam Rosenstadt LLP 501 Madison Avenue14th Floor New York, NY 10022 UNITED STATES evf@sovrlaw.com, jk@sovrlaw.com
Submission	Withdrawal of Opposition
Filer's Name	/evf/
Filer's e-mail	evf@sovrlaw.com,kori.clanton@gmail.com
Signature	/evf/
Date	07/29/2013
Attachments	Withdrawal of Opposition.pdf(57786 bytes) Co-existence Agreement.pdf(316961 bytes)

In the Matter of Application Serial No. 85/561,084
Filed on March 6, 2012
Published in the Official Gazette on August 21, 2012

Opposition No.: 91207031

V.

Applicant.

Opposer, Vyapar Capital Market Partners, LLC ("*Opposer*"), having an address at 44 Wall Street, 21st Floor, New York, New York, 10005, hereby withdraws its opposition against Applicant, Valmark Securities, Inc. ("*Applicant*"), pursuant to 37 CFR § 2.106(c) subject to the following terms and conditions.

1. Opposer filed a timely Notice of Opposition (“*Opposition*”) on September 18, 2012, objecting to registration of Applicant’s “VULMAX” trademark; Opposition Number 91207031 with the Trademark Trial and Appeal Board.

2. The parties, having engaged in good faith negotiations to resolve the opposition proceeding, entered into a world-wide co-existence agreement to avoid confusion and assist each other in establishing their trademark rights on June 18th, 2013.

3. In accordance with Section 1.1-5 of the parties' Trademark Co-Existence Agreement ("Agreement"), Applicant agreed, "1.1. To limit the specification of United States Trademark Application No. 85561084 to cover only "insurance services; namely, underwriting, issuing and administration of life insurance" in Class 36; [and] 1.2. Not to use or apply to register the mark VULMAX except in the limited services set out in 1.1."

4. In return for the above, Opposer undertakes to withdraw Opposition No. 91207031 against U.S. Trademark Application No. 85561084 for VULMAX in accordance with Section 2.2 of the Agreement, both parties to pay their own costs and attorney's fees.

5. Opposer's withdrawal of Opposition is hereby submitted with the written consent of the Applicant's attorney.

WHEREFORE, Opposer requests that Withdrawal of Opposition and registration be filed in due order.

Dated: New York, New York
July 19, 2013



Eric Vaughn-Flam, Esq.
Sanders Ortoli Vaughn-Flam Rosenstadt, LLP
501 Madison Avenue - 14th Floor
New York, NY 10022
Tel: (212) 588-0022

ATTORNEY FOR OPPOSER
Vyapar Capital Market Partners, LLC

Respectfully submitted,



Nathan B. Webb, Esq.
Emerson Thomson Bennett
1919 Akron Peninsula Road
Akron, OH 44313-4810

ATTORNEY FOR APPLICANT
ValMark Securities, Inc.

Trademark Co-Existence Agreement

Parties:

1. Vyapar Capital Market Partners, LLC (hereinafter "Vyapar") of 44 Wall Street, 21st Floor, New York, New York, 10005; and
2. ValMark Securities, Inc. (hereinafter "ValMark") of 130 Springside Drive, Akron, Ohio, 44333.

Preamble:

I. Vyapar is the registered proprietor of United States Trademark Registration No. 4,034,231, filed February 1, 2011, and registered on October 4, 2011, for "VOLMAX" in class 36 for "global financial services in the nature of an electronic matching service for over the counter or exchange traded derivatives instruments," and in class 38 for "telecommunications services, namely, providing access to secured online interface via the Internet to identify, analyze and effectuate trades between dealers."

II. ValMark is the proprietor of United States Trademark Application No. 85561084, filed March 6, 2012, and published for opposition on August 21, 2012, for "VULMAX" in association with the class 36 "insurance services, namely, underwriting, issuing and administration of life insurance."

III. Vyapar filed a timely Notice of Opposition on September 18, 2012, objecting to registration of ValMark's "VULMAX" trademark; Opposition Number 91207031 remains pending before the Trademark Trial and Appeal Board.

IV. The parties, having engaged in good faith negotiations to resolve the opposition proceeding, now wish to enter into a world-wide co-existence agreement to avoid confusion and assist each other in establishing their trademark rights.

Terms:

The parties agree as follows:

1. ValMark shall undertake as follows:

1.1. To limit the specification of United States Trademark Application No. 85561084 to cover only "insurance services; namely, underwriting, issuing and administration of life insurance" in Class 36;

1.2. Not to use or apply to register the mark VULMAX except in relation to the limited services set out in 1.1. above;

1.3. Not to oppose any future application for registration by Vyapar, or to challenge any future trade mark registrations, for the trade mark VOLMAX in relation to Class 36 or 38 services, except any applications or registrations that include those services specifically set out in 1.1 above;

1.4. To consent to the use and registration of VOLMAX by Vyapar in relation to services other than those set out in 1.1 above and to provide a written letter of such consent when asked by Vyapar to do so;

1.5. Not to use or attempt to register VULMAX or any mark incorporating VULMAX in relation to “global financial services in the nature of an electronic matching service for over the counter or exchange traded derivatives instruments,” and/or “telecommunications services, namely, providing access to secured online interface via the Internet to identify, analyze and effectuate trades between dealers.”

2. In return for the above, Vyapar undertakes as follows:

2.1. To consent to the use and registration of VULMAX in relation to “insurance services; namely, underwriting, issuing and administration of life insurance” by ValMark and any company included in the ValMark Group of companies;

2.2. To withdraw Opposition No. 91207031 against U.S. Trademark Application No. 85561084 for VULMAX immediately following the execution of this Agreement and in advance of June 28, 2013;

2.3. Not to oppose any future application for registration by ValMark, or to challenge any future trademark registrations, containing the mark VULMAX for the services set out in 1.1. above;

2.4. To forever waive any claims, known or unknown, that Vyapar might have been able to maintain with respect to ValMark’s use of the VULMAX trademark prior the execution of this Agreement;

2.5. To provide a written letter of consent in line with 2.1 above when asked by ValMark to do so;

2.6. Not to use or attempt to register VULMAX or any mark incorporating VULMAX in relation to the specific services set out in 1.1. above.

3. Each party shall bear its own costs in relation to this Agreement.

4. This Agreement shall be binding upon each party, their successors in title, companies that the parties may control, affiliated companies, or any licensees of the parties.

5. This Agreement shall have world-wide effect.

6. This Agreement shall be governed by New York law with jurisdiction in the New York courts.

7. Mutual Releases. Vyapar, on behalf of itself and its parents, subsidiaries, divisions, present and former officers, directors, employees, agents, attorneys and controlling persons, successors and assigns, expressly releases ValMark, and any of its subsidiaries, divisions, present and former officers, directors, employees, agents, attorneys and controlling persons, from any and all claims, demands, costs, expenses, liabilities, damages, actions, and causes of action, known or unknown, which relate to the VULMAX mark which were, or could have been, brought in the Civil Action or in any counterclaims or affirmative defenses thereto. ValMark, on behalf of itself and its parents, subsidiaries, divisions, present and former officers, directors, employees, agents, attorneys and controlling persons, successors and assigns, expressly releases Vyapar, and any of its subsidiaries, divisions, present and former officers, directors, employees, agents, attorneys and controlling persons, from any and all claims, demands, costs, expenses, liabilities, damages, actions, and causes of action, known or unknown, which relate to the VOLMAX mark which were, or could have been, brought in the Civil Action or in any counterclaims or affirmative defenses thereto.

8. Actual Confusion. In the event that either Party becomes aware of any actual confusion or mistake occurring as a result of their uses of their respective marks, the Parties agree to communicate all details of each such instance to each other, and to cooperate reasonably to take steps to abate the cause of confusion or mistake, and to prevent any such confusion or mistake from arising again.

9. No Waiver. No delay or omission to exercise any right, power, or remedy accruing to any Party, upon any breach or default under this Agreement, shall impair any such right, power, or remedy of such Party or be construed to be a waiver of any such breach or default, or an

acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All of a Party's remedies including without limitation recovery of attorneys' fees and costs, either under this Agreement, or by law or otherwise afforded to such Party, shall be cumulative and not alternative.

10. Notices. All communications required or permitted to be made under this Agreement shall be in writing and either shall be delivered personally or sent by United States Postal Service certified or registered mail, postage prepaid and return receipt requested, to the address or addresses set forth below, or to such other address or addresses as either party may notify the other pursuant to this Section. Any such communication shall be deemed to be properly given (i) if delivered personally, upon written acknowledgment of receipt after delivery to the address specified; or (ii) if posted, the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) business days from the date posted pursuant to the foregoing. The addresses for the parties are as follows:

To Vyapar addressed to:

Vyapar Capital Market Partners LLC
44 Wall Street, 21st Floor
New York, New York 10005
Attn: Ashok Mittal

With a copy, via the same mode, addressed to:

Eric Vaughn-Flam, Esq.
Sanders Ortolí Vaughn-Flam Rosenstadt LLP
501 Madison Avenue, 14th Floor
New York, New York 10022

To ValMark addressed to:

ValMark Securities, Inc.
130 Springside Drive, Suite 300
Akron, Ohio 44333
Attn: Mark White

With a copy, via the same mode, addressed to:

Nathan B. Webb Esq.
NBW@ETBlaw.com
Emerson Thomson Bennett
1914 Akron-Peninsula Rd.

Akron, OH 44313

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement.

12. Entire Agreement. This Agreement cannot be changed or terminated orally, and none of the terms hereof shall be deemed to be waived or modified except by an express agreement in writing signed by the party against whom such waiver or modification is sought to be enforced. There are no representations or undertakings other than those contained in this Agreement, which represents the entire understanding of the parties.

13. Warranties. Each party warrants and represents to the other that each is under no disability, restriction or prohibition, whether contractual or otherwise, to enter into this agreement and to perform their respective obligations hereunder; that they are entering into this Agreement freely and voluntarily; that they have ascertained and weighed all the facts and circumstances likely to influence their judgment herein; that they have given due consideration to the provisions contained herein, and that they thoroughly understand and consent to all provisions hereof.

14. Termination. Termination of this Agreement for any reason shall not affect (i) obligations which have accrued as of the date of termination, and (ii) those obligations which, from the context hereof, are intended to survive termination of this Agreement.

15. Waiver. Waiver by any party of any breach of this Agreement or failure to exercise any right hereunder shall not be deemed to be a waiver of any other breach or right. The failure of any party to take action by reason of any such breach or to exercise any such right shall not deprive such party of the right to take action at any time while such breach or condition giving rights to such right continues.

16. Severability. If any provision of this Agreement is held invalid, such invalidity shall not affect the other provisions hereof which can be given effect without the invalid provision, and, to this end, the provisions of this Agreement are intended to be and shall be deemed severable.

17. Injunctive Relief. The parties agree that it is impossible to determine the amount of the monetary damages which will accrue to the non-breaching party by reason of a failure of any other party hereto to perform any of the obligations under this Agreement requiring the performance of an act other than the payment of money only. Therefore, if any party hereto shall institute any action or proceeding in equity to enforce the provisions hereof, any person (including the Corporation) against whom such equitable action or proceeding is brought hereby waives the claim or defense therein that such party instituting the action, has an adequate remedy at law, and such person shall not urge in such equitable action or proceeding the claim or defense that such remedy at law exists. Accordingly, the Parties agree that if either Party breaches any section of this Agreement, the other Party may be entitled, in addition to other remedies available to it, to an injunction to be issued by the United States District Court for the Southern District of New York restraining the other Party from committing or continuing any breach of this Agreement, without the need for posting any bond or any other undertaking and without opposition by the other Party to such remedies or relief.

18. Further Instruments. Each party hereto agrees to execute or cause to be executed such further documents and instruments as a party may request in order to effectuate the terms and intentions of this agreement

19. Waiver of Jury Trial. THE PARTIES HERETO WAIVE THE RIGHT TO A JURY WITH RESPECT TO THE RESOLUTION OF ANY DISPUTE BROUGHT IN CONNECTION WITH THIS AGREEMENT.

20. Governing Laws. This agreement is made in and shall be interpreted and governed in accordance with the laws of the State of New York applicable to contracts made and wholly to be performed within such state. The parties agree that only the courts of the State of New York shall have jurisdiction over any claim, controversy or dispute. Valid service of process may be made hereunder by sending a copy of all documents in connection with the same to the party for whom intended in the manner and at the address for that party set forth hereinabove and that any process so served in such manner shall be deemed to have been properly given and shall be deemed to have conferred jurisdiction of the courts of the State of New York over the party upon whom such process was served. In the event that process must be personally served in connection with any such dispute, the parties agree that such process may be served by personal delivery or by registered mail, to the parties at their addresses set forth hereinabove.

21. **Submission to Jurisdiction.** Any action or proceeding arising out of, relating to or in connection with this Agreement may be brought and enforced exclusively in any court located within the State of New York, and each Party (a) irrevocably submits to the jurisdiction of each such court in respect of any such action or proceeding, (b) waives, to the fullest extent permitted by law, any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in any such court, (c) waives, to the fullest extent permitted by law, personal service of any and all process upon it, (d) consents that all such service of process be made by mail or messenger directed to it at the address of such Party set forth in this Agreement and (e) agrees that service so made shall be deemed to be completed upon actual receipt thereof.

22. **Enforcement.** In the event it becomes necessary for either party to bring an action or proceeding to enforce the terms hereof, and said party prevails in said action or proceeding, or there is a settlement of said action or proceeding in which the interests of the party bringing such action are advanced with respect to this agreement, then in that event said party shall be indemnified for all costs and expenses, including reasonable attorney's fees, incurred in connection with said enforcement. The term "prevailing party" for the purposes of this Section shall include a defendant who has by motion, judgment, verdict or dismissal by the court, successfully defended against any claim that has been asserted against it.

23. **Paragraph Headings.** The paragraph headings are for convenience only and shall not be deemed to affect in any way the language of the provisions to which they refer.

24. **Pronouns.** As used in this Agreement, the masculine pronouns shall refer to male or female persons or corporate entities where such construction is required to give meaning to a provision contained herein.

25. **Construction.** This agreement shall be deemed to have been jointly prepared by both of the parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either party.

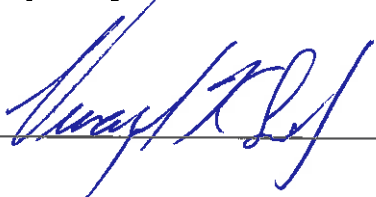
26. **No Partnership.** Nothing contained herein shall constitute nor create a partnership or joint venture between the parties. Neither party shall have the right to obligate or bind the other in any manner whatever nor hold him/her/itself out contrary to the terms of the paragraph, and neither

party shall become liable for any representation act or omission of the other contrary to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set our hands as of the date first set forth above.

Vyapar Capital Market Partners LLC

ValMark Securities Inc.

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Print Name: VINAYEK K SINGH

Print Name: MARK WHITE

STATE OF Ohio)
COUNTY OF Summit).ss:

On the 18 day of June, 2013, before me personally came:
mark white to me known, who, being by me
duly sworn, did depose and say that s/he resides at the address listed below; that s/he is employed
with the title and designation listed below by the corporation/limited liability company listed
below and described in the foregoing instrument or document, and which executed the foregoing
instrument or document; by order and with the authorization of the board of directors of said
corporation; and that s/he signed his/her name to the foregoing instrument by like order.

Title of Officer: *SENIOR VICE PRESIDENT*

Residence Address of Officer: *130 SPRINGSIDE DR ; SUITE 300
AKRON, OHIO 44333*

Corporation Name: ValMark Securities Inc.

Susan M. Bungo

Notary Public

Susan M. Bungo
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 09/11/2015

STATE OF NEW YORK)

COUNTY OF NEW YORK).ss:

On the 24th day of May, 2013, before me personally came: VINAYEK SINGH to me known, who, being by me duly sworn, did depose and say that he resides at the address listed below; that he is employed with the title and designation listed below by the limited liability company listed below and described in the foregoing instrument or document, and which executed the foregoing instrument or document; by order and with the authorization of the board of managers of said limited liability company; and that he signed his name to the foregoing instrument by like order.

Title of Officer: CEO

Residence Address of Officer:

Corporation Name: Vyapar Capital Market Partners LLC

[Signature]

Notary Public

